

May 21, 2013

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**Re: Request for Information Pursuant to the Freedom of Information Act  
Data and Reports Submitted Pursuant to Consent Decree Reporting  
Requirements**

Dear Sir or Madam:

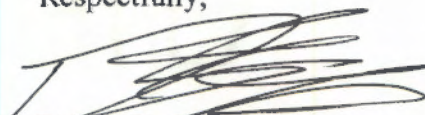
Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, I hereby request a copy of all data and reports, including but not limited to semi-annual reports, reports of a violation or deviation, and/or notice of intent to assert affirmative defense(s), submitted to U.S. EPA by the following companies pursuant to the attached "Periodic Reporting" sections of the Consent Decrees entered in the following actions:

- 1) Dairyland Power Cooperative (Case No. 3:12-cv-00462-bbc; Case No. 3:10-cv-00303-bbc);
- 2) Northern Indiana Public Service Co. (Case No. 2:11-cv-00016-JVB-APR);
- 3) Hoosier Energy Rural Electric Cooperative, Inc. (Case No. 1:10-cv-00935-LJM-TAB);
- 4) American Municipal Power, Inc. (Case No. 2:10-cv-00438-MHW-NMK);
- 5) American Electric Power Service Corp. (Civil Action No. C2-99-1250 (consolidated with No. C2-99-1182); Civil Action No. C2-05-360; Civil Action No. C2-04-1098).

If this request is denied in whole or part, please justify the denial of any portion of this request, as well as any and all deletions, by reference to specific exemptions of the Act.

Thank you in advance for your cooperation. We understand that there will be charges for the copies of documents responsive to this FOIA request. We are willing to pay reasonable duplication fees for the processing of this request. If you have any questions concerning this request, please feel free to contact me at (317) 713-3523.

Respectfully,



Robert R. Clark

1852054.1

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

DAIRYLAND POWER COOPERATIVE,

Defendant.

Civil Action No.: 12-cv-462

SIERRA CLUB,

Plaintiff

v.

DAIRYLAND POWER COOPERATIVE,

Defendant.

Civil Action No.: 10-CV-303-bbc

CONSENT DECREE



b. Section 111 of the Act, 42 U.S.C. § 7411, and 40 C.F.R. § 60.14; and

c. Title V of the Act, 42 U.S.C. § 7661-7661f, but only to the extent that such Title V claims are based on DPC's failure to obtain an operating permit that reflects applicable requirements imposed under Part C or D of Subchapter I of the Act, from any operations, emissions, or modifications commenced at G-3, J.P. Madgett, or Alma Units 1, 2, 3, 4 or 5 or any combination thereof, prior to the Date of Lodging of this Consent Decree. Entry of this Consent Decree shall also resolve all civil claims, causes of action, demands, actions and/or rights of action, of whatever kind or nature, that the Sierra Club now has under 42 U.S.C. § 7604(a), Wis. Stat. ch. 285, and Wis. Admin. Code chs. NR 400-499 against DPC for any alleged violations of visible emissions (opacity) limits and Carbon Monoxide (CO) limits applicable to Alma, G-3 or J.P. Madgett which occurred prior to the Date of Lodging of this Consent Decree.

## **XII. PERIODIC REPORTING**

147. After entry of this Consent Decree, DPC shall submit to Plaintiffs a periodic report, within 60 Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:

- a. all information necessary to determine compliance during the reporting period with: all applicable 30-Day Rolling Average NO<sub>x</sub> Emission Rates and 30-Day Rolling Average SO<sub>2</sub> Emission Rates; all applicable 12-Month Rolling Average Emission Rates for SO<sub>2</sub>; all applicable PM Emission Rates; all applicable Unit-Specific Annual Tonnage Caps; all applicable Plant-Wide Annual Tonnage Caps; all applicable System-Wide Annual Tonnage Limitations; the obligation to

- monitor NO<sub>x</sub>, SO<sub>2</sub>, and PM emissions; the obligation to optimize PM emission controls; and the obligation to Surrender NO<sub>x</sub> Allowances and SO<sub>2</sub> Allowances;
- b. 3-hour rolling average PM CEMS data as required by Paragraph 128, identifying all 3-hour periods in excess of 0.030 lb/mmBTU or 0.015 lb/mmBTU, as appropriate, and all periods of monitor malfunction, maintenance, and/or repair as provided in Paragraph 124;
  - c. emission reporting and Allowance accounting information necessary to determine Super-Compliant NO<sub>x</sub> and SO<sub>2</sub> Allowances that DPC claims to have generated in accordance with Sections V.G and VI.G through control of emissions beyond the requirements of this Consent Decree;
  - d. schedule for the installation or upgrade and commencement of operation of new or upgraded pollution control devices required by this Consent Decree, including the nature and cause of any actual or anticipated delays, and any steps taken by DPC to mitigate such delay;
  - e. all affirmative defenses asserted pursuant to Paragraphs 163 through 171 during the period covered by the progress report;
  - f. an identification of all periods when any pollution control device required by this Consent Decree to Continuously Operate did not Continuously Operate, the reason(s) for the equipment not operating, and the basis for DPC's compliance or non-compliance with the Continuous Operation requirements of this Consent Decree; and



- g. a summary of actions implemented and expenditures made pursuant to implementation of the Environmental Mitigation Projects required pursuant to Section IX.

148. In any periodic report submitted pursuant to this Section XII, DPC may incorporate by reference information previously submitted under its Title V permitting requirements, provided that DPC attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

149. In addition to the reports required pursuant to this Section XII, if DPC violates or deviates from any provision of this Consent Decree, DPC shall submit to Plaintiffs a report on the violation or deviation within 10 business days after DPC knew or by the exercise of due diligence should have known of the event. In the report, DPC shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by DPC to cure the reported violation or deviation or to prevent such violation or deviation in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.

150. Each DPC report shall be signed by the Responsible Official as defined in Title V of the Act for the Genoa Site or Alma Site, as appropriate, and shall contain the following certification:

*This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify*

*under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or misleading information to the United States.*

### **XIII. REVIEW AND APPROVAL OF SUBMITTALS**

151. DPC shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within 60 Days of receiving written comments from EPA, DPC shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.

152. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, DPC shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule or as resolved at the completion of the Dispute Resolution process.

### **XIV. STIPULATED PENALTIES**

153. For any failure by DPC to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), DPC shall pay, within 30 Days after receipt of written demand to DPC by the United States, the following stipulated penalties to the United States:



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA**

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**UNITED STATES OF AMERICA,**

**and**

**THE STATE OF INDIANA,**

**Plaintiffs**

**v.**

**NORTHERN INDIANA PUBLIC  
SERVICE CO.,**

**Defendant.**

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**Civil Action No. 2:11-cv-00016**

**CONSENT DECREE**

- d. The introduction of any new or changed NAAQS shall not, standing alone, provide the showing needed under subparagraph (c) of this Paragraph to pursue any claim for a modification at an Other Unit resolved under Subsection A of this Section.

### **XIII. PERIODIC REPORTING**

126) Pursuant to Paragraph 93 of this Consent Decree, NIPSCO shall conduct performance tests for PM that demonstrate compliance with the PM Emission Rate required by this Consent Decree with respect to NIPSCO System Units. Within forty-five (45) days of each such performance test, NIPSCO shall submit the results of the performance test to EPA and IDEM at the address specified in Section XXI (Notices) of this Consent Decree.

127) Beginning thirty (30) days after the end of the second calendar quarter following the Date of Entry of this Consent Decree, and continuing on a semi-annual basis until termination of this Consent Decree, and in addition to any other express reporting requirement in this Consent Decree, NIPSCO shall submit to EPA a progress report containing the following information:

- a. all information necessary to determine compliance with the requirements of the following Tables of this Consent Decree: Tables 1, 2, 3 and 4 concerning NO<sub>x</sub> emissions; Tables 5 and 6 concerning SO<sub>2</sub> emissions (including information related to burning of low sulfur coal at Bailly Units 7 and 8); and Table 7 concerning PM emissions;



- b. documentation of any Capital Expenditures at a Unit's Boiler Island made during the period covered by the progress report and cumulative Boiler Island Capital Expenditures to date;
- c. all information relating to emission allowances and credits that NIPSCO claims to have generated in accordance with Paragraphs 70 and 85, through compliance beyond the requirements of this Consent Decree;
- d. all information indicating the status of installation and commencement of operation of pollution controls, including information that the installation and commencement of operation of a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by NIPSCO to mitigate such delay;
- e. all affirmative defenses asserted by NIPSCO pursuant to Section XVII (Affirmative Defense) for that quarter;
- f. all information relating to excess emissions due to startup, shutdown, and Malfunction emissions, including steps taken to minimize the adverse effects of such excess emissions; and
- g. information verifying compliance with:
  - i. Continuous Operation of all pollution control equipment.
  - ii. allowance Surrender requirements, including supporting calculations, and
  - iii. optimization of any ESP's, including any periods during which all sections were not in service, the reasons therefore and actions taken to remedy such failure.

128) In any periodic progress report submitted pursuant to this Section, NIPSCO may incorporate by reference information previously submitted under its Title V permitting requirements, provided that NIPSCO attaches the Title V permit report, or the relevant portion thereof, and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

129) In addition to the progress reports required pursuant to this Section, NIPSCO shall provide a written report to EPA of any violation of the requirements of this Consent Decree within fifteen (15) calendar days of when NIPSCO knew or should have known of any such violation. In this report, NIPSCO shall explain the cause or causes of the violation and all measures taken or to be taken by NIPSCO to prevent such violations in the future.

130) Each NIPSCO report shall be signed by NIPSCO's Vice President of Generation or his or her equivalent or designee of at least the rank of Vice President, and shall contain the following certification:

This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

131) If any Allowances are Surrendered to any third party pursuant to this Consent Decree, the third party's certification pursuant to Paragraphs 72 and 87, shall be signed by a managing officer of the third party and shall contain the following language:

I certify under penalty of law that, \_\_\_\_\_ [name of third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I



understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

**XIV. REVIEW AND APPROVAL OF SUBMITTALS**

132) Unless otherwise provided, NIPSCO shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. Plaintiffs may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval. Within sixty (60) days of receiving written comments from Plaintiffs, NIPSCO shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to Plaintiffs; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVIII (Dispute Resolution) of this Consent Decree.

133) Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, NIPSCO shall implement the approved submittal in accordance with the schedule specified therein or another EPA-approved schedule.

**XV. STIPULATED PENALTIES**

134) For any failure by NIPSCO to comply with the terms of this Consent Decree, and subject to the provisions of Sections XVI (Force Majeure), VXII (Affirmative Defenses) and XVIII (Dispute Resolution), NIPSCO shall pay, within thirty (30) days after receipt of written demand to NIPSCO by the United States, the following stipulated penalties to the United States:





modifications) results in an emissions increase of SO<sub>2</sub> at such Unit, and such increase causes the emissions at Ratts to exceed the tonnage limitations of Paragraphs 83 or 89.

## **XII. PERIODIC REPORTING**

153. After entry of this Consent Decree, Hoosier shall submit to Plaintiffs a periodic report, within sixty (60) Days after the end of each half of the calendar year (January through June and July through December). The report shall include the following information:
- a. all information necessary to determine compliance with the requirements of the following Paragraphs of this Consent Decree: Paragraphs 65 through 82 concerning NO<sub>x</sub> emissions and monitoring, including all information necessary to determine whether it is technically infeasible to Continuously Operate the SCR as provided in Paragraph 70, and the surrender of NO<sub>x</sub> Allowances; Paragraphs 83 through 108 concerning SO<sub>2</sub> emissions and monitoring, and the surrender of SO<sub>2</sub> Allowances; Paragraphs 109 through 118 concerning H<sub>2</sub>SO<sub>4</sub> emissions and monitoring; and Paragraphs 119 through 131 concerning PM emissions and monitoring;
  - b. daily removal efficiencies for SO<sub>2</sub> emissions from Merom Unit 1 and Unit 2 and 30-Day Rolling Average SO<sub>2</sub> Removal Efficiencies for Merom Unit 1 and Unit 2, to demonstrate compliance with Paragraph 90;
  - c. 3-hour rolling average PM CEMS data as required by Paragraph 129, identifying all periods in excess of 0.030 lb/mmBTU or 0.015 lb/mmBTU, as appropriate, and all periods of monitor malfunction, maintenance, and/or repair as provided in Paragraph 125;

- d. all information relating to Super-Compliant NO<sub>x</sub> Allowances that Hoosier claims to have generated in accordance with Paragraphs 79 through compliance beyond the requirements of this Consent Decree; and
  - e. all information indicating that the installation or upgrade and commencement of operation of a new or upgraded pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by Hoosier to mitigate such delay.
154. In any periodic report submitted pursuant to this Section, Hoosier may incorporate by reference information previously submitted under its Title V permitting requirements, provided that Hoosier attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.
155. In addition to the reports required by Paragraph 153, if Hoosier violates or deviates from any provision of this Consent Decree, Hoosier shall submit to Plaintiffs a report on the violation or deviation within ten (10) business days after Hoosier knew or should have known of the event. In the report, Hoosier shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by Hoosier to cure the reported violation or deviation or to prevent such violation or deviations in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this Paragraph.



156. Each Hoosier report shall be signed by the Responsible Official as defined in Title V of the Clean Air Act for Merom and/or Ratts, as appropriate, and shall contain the following certification:

*This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.*

157. If any NO<sub>x</sub> or SO<sub>2</sub> Allowances are surrendered to any non-profit third party pursuant to Paragraphs 81 and/or 107, the non-profit third party's certification shall be signed by a managing officer of the non-profit third party and shall contain the following language:

*I certify under penalty of law that \_\_\_\_\_ [name of non-profit third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making misrepresentations to or misleading the United States.*

### **XIII. REVIEW AND APPROVAL OF SUBMITTALS**

158. Hoosier shall submit each plan, report, or other submission required by this Consent Decree to Plaintiff. Whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree, EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such submittal, if practicable. Within sixty (60) Days of receiving written comments, Hoosier shall either: (a) revise the submittal consistent with the comments and provide the revised submittal to EPA; or (b) submit the matter for

156. Each Hoosier report shall be signed by the Responsible Official as defined in Title V of the Clean Air Act for Merom and/or Ratts, as appropriate, and shall contain the following certification:

*This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.*

157. If any NO<sub>x</sub> or SO<sub>2</sub> Allowances are surrendered to any non-profit third party pursuant to Paragraphs 81 and/or 107, the non-profit third party's certification shall be signed by a managing officer of the non-profit third party and shall contain the following language:

*I certify under penalty of law that \_\_\_\_\_ [name of non-profit third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making misrepresentations to or misleading the United States.*

### **XIII. REVIEW AND APPROVAL OF SUBMITTALS**

158. Hoosier shall submit each plan, report, or other submission required by this Consent Decree to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within sixty (60) Days of receiving written comments from EPA, Hoosier shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for



Defendant.

## CONSENT DECREE

modifications that commenced at the Gorsuch Station prior to the date of lodging of this Consent Decree. Entry of this Consent Decree shall also resolve the civil claims of the United States for the opacity violations alleged in the Complaint filed in this action, and any additional opacity violations committed by AMP at the Gorsuch Station through the date of lodging of the Decree.

## **XII. PERIODIC REPORTING**

79. After entry of this Consent Decree, AMP shall submit to the United States a periodic report, within sixty (60) days after the end of each half of the calendar year (January through June and July through December) until such time as the Gorsuch Station is Retired and the Project is completed as applicable. The report shall include the following information:

- a. all information necessary to determine compliance with the requirements of the following Sections of this Consent Decree: Section IV concerning retiring the Gorsuch Station; Section V concerning NO<sub>x</sub> emissions and the surrender of NO<sub>x</sub> Allowances; Section VI concerning SO<sub>2</sub> emissions and the surrender of SO<sub>2</sub> Allowances; and Section VII concerning PM emissions;
- b. all information relating to Super-Compliant Allowances that AMP claims to have generated in accordance with Paragraphs 45 and 57 through emission reductions beyond the requirements of this Consent Decree;
- c. information relating to the number of offsets generated by Retiring the Gorsuch Station; the number of offsets used to permit a natural gas unit pursuant to Paragraph 63; and the number of offsets purchased in order to permit the natural gas unit pursuant to Paragraph 64.



- d. for the Project, a summary of actions taken, funds expended during the reporting period, as well as cumulative expenditures, and energy efficiency and estimated environmental benefits achieved to date in satisfaction of the requirements of Section IX (Environmental Mitigation Project).

80. In any periodic report submitted pursuant to this Section, AMP may incorporate by reference information previously submitted under its Title V permitting requirements, provided that AMP attaches the Title V permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic report.

81. In addition to the reports required by Paragraph 79, if AMP violates or deviates from any provision of this Consent Decree, excluding late reports for which the report itself is sufficient notice of the deviation, AMP shall submit to the United States a report on the violation or deviation within ten (10) business days after AMP obtained knowledge of the event. In the report, AMP shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by AMP to cure the reported violation or deviation or to prevent such violation or deviations in the future. If at any time, the provisions of this Consent Decree are included in Title V Permits, consistent with the requirements for such inclusion in this Consent Decree, then the deviation reports required under applicable Title V regulations may be submitted to the United States to satisfy all the requirements of this Paragraph.

82. Each AMP report shall be signed by AMP's Environmental Manager (or equivalent title), and shall contain the following certification: This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

83. If any NO<sub>x</sub> or SO<sub>2</sub> Allowances are surrendered to any non-profit third party pursuant to Paragraphs 43 and 55, the non-profit third party's certification shall be signed by a managing officer of the non-profit third party and shall contain the following language: I certify under penalty of law that \_\_\_\_\_ [name of non-profit third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making misrepresentations to or misleading the United States.

### **XIII. REVIEW AND APPROVAL OF SUBMITTALS**

84. AMP shall submit each report or other submission required by this Consent Decree to EPA whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments explaining the bases for declining such approval as soon as reasonably practicable. Within sixty (60) days of receiving written comments from EPA, AMP shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal to EPA; or (b) submit the matter for dispute resolution, including the period of informal



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA )

Plaintiff, )

and )

STATE OF NEW YORK, ET AL., )

Plaintiff-Intervenors, )

v. )

JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Terence P. Kemp

AMERICAN ELECTRIC POWER SERVICE )

CORP., ET AL., )

Defendants. )

Civil Action No C2-99-1250  
(Consolidated with C2-99-1182)

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

JUDGE GREGORY L. FROST  
Magistrate Judge Norah McCann King

AMERICAN ELECTRIC POWER SERVICE )

CORP., ET AL., )

Defendants. )

Civil Action No C2-05-360

OHIO CITIZEN ACTION, ET AL.,

Plaintiffs,

V.

AMERICAN ELECTRIC POWER SERVICE  
CORP., ET AL.,

**Defendants.**

JUDGE GREGORY L. FROST  
Magistrate Judge Norah McCann King

Civil Action No. C2-04-1098

## CONSENT DECREE



except to the extent that such activities would cause a significant increase in the emission of a criteria pollutant other than SO<sub>2</sub>, NO<sub>x</sub>, or PM.

142. Retention of Authority Regarding NAAQS Exceedences. Nothing in this Consent Decree shall be construed to affect the authority of the United States or any state under applicable federal statutes or regulations and applicable state statutes or regulations to impose appropriate requirements or sanctions on any Unit in the AEP Eastern System, including, but not limited to, the Units at the Clinch River plant, if the United States or a state determines that emissions from any Unit in the AEP Eastern System result in violation of, or interfere with the attainment and maintenance of, any ambient air quality standard.

#### XI. PERIODIC REPORTING

143. Beginning on March 31, 2008, and continuing annually thereafter on March 31 until termination of this Consent Decree, and in addition to any other express reporting requirement in this Consent Decree, Defendants shall submit to the United States, the States, and the Citizen Plaintiffs a progress report in compliance with Appendix B of this Consent Decree.

144. In any periodic progress report submitted pursuant to this Section, Defendants may incorporate by reference information previously submitted under their Title V permitting requirements, provided that Defendants attach the Title V permit report, or the relevant portion thereof, and provide a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

145. In addition to the progress reports required pursuant to this Section, Defendants shall provide a written report to the United States, the States, and the Citizen Plaintiffs of any violation of the requirements of this Consent Decree within fifteen (15) days of when Defendants knew or should have known of any such violation. In this report, Defendants shall explain the

cause or causes of the violation and all measures taken or to be taken by Defendants to prevent such violations in the future.

146. Each report shall be signed by Defendants' Vice President of Environmental Services or his or her equivalent or designee of at least the rank of Vice President, and shall contain the following certification:

This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

147. If any SO<sub>2</sub> or NO<sub>x</sub> Allowances are surrendered to any third party pursuant to this Consent Decree, the third party's certification pursuant to Paragraphs 83 and 95 shall be signed by a managing officer of the third party and shall contain the following language:

I certify under penalty of law that, \_\_\_\_\_ [name of third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.